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IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 561

MARK SKINNER WILLING AND THE NORTHERN TRUST COMPANY, AS TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF HENRY J. WILLING, DECEASED, AND MARK S. WILLING,

Petitioners,

vs.

CHICAGO AUDITORIUM ASSOCIATION, A CORPORATION,

Respondent.

BRIEF FOR PETITIONERS.

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(A) *As to Equity Jurisdiction.*

The Circuit Court of Appeals erred in holding "The Instant Suit Is Properly Cognizable in a Court of Equity" as "One to Remove a Cloud on Title"..... 19

I. The substantive law of the State of Illinois, and none other, is applicable to determine the respondent's title or whether the title is clouded. 20

II. Decisions of the highest court of the State of Illinois hold that doubtful provisions in an owner's muniment of title, coupled with oral hostile assertions as to said provisions by an adverse claimant, do not constitute a cloud upon that title..... 21

III. The decision of the Circuit Court of Appeals, holding that doubtful provisions in the respondent's muniment of title, coupled with the position of the petitioners based thereon and manifested only by oral statements, constitute a cloud upon title, is in conflict with the property law of the State of Illinois..... 24

IV. The relief sought by the respondent, which the Circuit Court of Appeals erroneously holds is proper, is an adjudication of its own title by the process of construing its leases and declaring the rights of the parties thereunder 27

V. The case set up by the respondent is not embraced within any principle or head of equity jurisprudence, and is an application for a declaratory decree not within the judicial function 30

VI. As a bill to declare rights under the leases, the exercise of jurisdiction would be particularly erroneous because a court of equity is called upon to declare and adjudicate a plaintiff's title to realty..... 33

(B) *As to Federal Jurisdiction.*

The petitioners were wrongfully prevented from litigating in the courts of the State of Illinois by the erroneous refusals of the federal courts to remand the case to the state court.. 35

I. There is no separable, removable controversy unless there is a separate and distinct cause of action as to the defendants seeking removal, which can be decided as between said defendants and the plaintiff in the absence of all other defendants..... 37

II. It becomes the duty of a federal court, at whatever stage of litigation it discerns that federal jurisdiction is lacking in a removed case, to remand it to a state court..... 38

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